

An Essay on Conservation Easements and Purchase Development Rights CE/PDR

In recent decades, Conservation Easements (CE's) and Purchased Development Rights (PDR's) have been used to acquire tax write-offs on private lands. Tax relief and the ability to retain the land in agricultural production have been the biggest reasons for doing this. But landowners have placed private property into a split estate without fully understanding the impacts to themselves or their community. These owners need to learn to ask the right questions.

Land trusts are groups, usually conservation organizations that come to landowners and communities with the claim they are working to protect rural agriculture from development pressure. Development is not the problem as much as rural economic pressures that come from:

- ❑ Government restrictions and regulations.
- ❑ Tax exempt non-government organization-environmental lawsuits.
- ❑ Weather fluctuations.
- ❑ Market fluctuations.
- ❑ Operators being price takers without control or participating in the market pricing structure (the ability to pass on increased business costs.)
- ❑ Subsidized foreign market dumping without protection.
- ❑ Influx of wealthy urbanites competing for land and local control.
- ❑ Estate taxes, capital gain taxes and tax compliance costs.

These pressures can cumulatively force the economic death of rural area economies. They create compromised sellers ready for a quick fix to financial problems. These folks are not willing sellers, they do not want to stop their cultural and historic uses of the land or extinct their heritage.

Do CE's protect agriculturalists from the real pressures as land trusts and politicians? **NO THEY DO NOT!** The next question to ask is, if land trusts are concerned with protecting agriculture, then what have they done to alleviate these real pressures? Lands put into CE/PDR might be left in agriculture for the life of the owner, however after that they are removed and never returned to agricultural use.

CE's or PDR's separate certain rights from the fee title to the land. Splitting the title of private land has other consequences also:

- ❑ Owners give up management and control of the land.
- ❑ Severely diminished, and in some cases they completely eliminate the loan value of land.
- ❑ Loan value for operation and other loans are generally reduced up to 90%.

All of the above combine to deny future generations a full range of productive land use options. This can also make it impossible for heirs to hold on to their heritage.

In interviewing landowners with CE's or PDR's some misconceptions have been revealed:

- ❑ Perpetual means 99-years. False, perpetual is forever.
- ❑ Owner retains full title to land. False, title is split with the easement holder.
- ❑ A CE/PDR still allows the land to be managed to the intent of the original owner; False, the easement holder or future easement holder can change management practices at any time including development! Easement management loopholes also allow easement holders to sue the landowner and impose habitat restrictions.
- ❑ A CE/PDR allows the original owner to use the property as they always have; False, the landowner gives up control of all easement property forever.
- ❑ Property with a CE/PDR will sell easy. False, this reduces the property value and affects the willingness of financial institutions to loan money because of a split estate.

Economic impacts and other impacts that affects landowners and communities have been:

- ❑ Reduced management options on taxed land by landowners and heirs.
- ❑ Restrictions on farm and ranch management practices.
 - Chemicals used.
 - Seed and plant types, etc.
- ❑ Reduction of income due to restrictions.
- ❑ Reduction of management options on the land and with business declining force the owner into a "willing seller" status (Actually a Compromised Seller.)
- ❑ Imposition of Environmental Assessment or Environmental Impact Statement expenses on landowners for restriction and management changes, especially if a Federal nexus or connection exists.
- ❑ Legal and penalty expenses for CE/PDR violations (usually built into the fine print.)
- ❑ Vulnerability from non-trust third party lawsuit litigation (Exposure is in the Easement Act.)
- ❑ Decreased or eliminated production translating into negative economic impacts to agriculture and related industries within community, county and state.
- ❑ Reports indicate most lands in CE/PDR have not stayed in agriculture and are now untaxed "open space" owned by the government or wealthy nonagricultural groups, and are restricted without production.
- ❑ Reduction of direct, induced and indirect economic benefits to related industries within the community, county and state.
- ❑ Reduction of the county tax base, forcing tax increases and reduction of County services on other property owners in the County to make up the loss. (a disproportionate burden.)

The Land Trust Alliance studied the impacts resulting from conservation violations. (Contracts make the landowner responsible for legal fees and penalties.) The average cost per case is \$35,000 with a range of \$5,000 to \$100,000. Of 498 reported violations, 22 were litigated; only one landowner won in court, but still had to pay land trust expenses (\$100,000.)

Another little understood impact of CE/PDR is that if there are any federal permits or expenditures involved, it would create a Federal nexus. Landowners then must undergo a Section 7 consultation process under the Endangered Species Act, for existing and new species, restriction and proposed management changes. The owner with a CE/PDR must also pay for all related expenses for studies.

A typically missed question is who is behind the push to get private property into a CE/PDR? CE's and PDR's are the centerpiece to what is known as the Wildlands Project (TWP), a plan developed by Michael Soule, Dave Foreman (founder of Earth First) and Dr. Reed Noss. The concept is that wilderness areas need connecting corridors (areas without human activity) for wildlife to roam freely and keep the gene pool healthy. CE's and PDR's are the key to establishing these corridors.

Derrick Jensen of Sierra Club Books quoted Dave Foreman in "Listening to the Land" as considering conservation easements as the keys to the corridors. He also has this to say about conservation easements.

"If we identify a ranch that's between two wilderness reserves, and we feel it will be necessary as a corridor, we can say to the rancher, 'We don't want you to give up your ranch now, but let us put a conservation easement on it. Let's work out the tax details so you can donate it in your will to the reserve system.'"

The implications of the Wildlands Project are a plan to render 50% of the United States land area as unoccupied or affected by human activity. In the State of Nevada Activists see all but Reno, Las Vegas, the gold mines and the I-80 corridor as returned to nature. "I like the idea of taking it all and making people corridors," stated Marge Sill, federal-lands coordinator for the Sierra Club in a statement that she gave to the High Country News.

Several trusts such as the Nature Conservancy (TNC), involved with developing the CE/PDR concept support and promote the Wildlands Project. A good reason to take the Wildlands Project seriously is because of the big money behind it. Not only is TNC involved, the Ted Turner Foundation, the Pew Charitable Trusts, Patagonia outdoor gear, the Ford Foundation GM Foundation and the Rockefeller Brothers Foundation all are heavy contributors to TWP.

Land trusts use foundation funding to acquire CE/PDR but the main purpose for their acquisition is to resell it back to the government. According to Carol LaGrasse, president of the Property Rights Foundation of America, transactions monitored by her group included markups of 22% to 155% in sales of trust lands to government agencies, with profits as much as \$5 million.

Last year a modified version of the Conservation and Reinvestment Act (CARA) passed in Congress. It created a huge slush fund for park purchases and maintenance. Next year, with bipartisan support in Congress and the backing of major environmental groups, a full-fledged, and fully funded CARA could stand a good chance of getting through.

Questions that landowners should ask themselves if approached for a CE, or PDR are:

- ❑ What are the impacts of CE/PDR to the landowners and communities?
- ❑ Do the benefits offset the impacts? (Lost tax revenue and future earnings opportunities.)
- ❑ What are the other impacts and implications from imposing a CE/PDR on private land? (Consider Federal Nexus and Section 7.)
- ❑ What is the long-range outcome from imposing a CE/PDR on private landowners? (According to whom?) (A tax-exempt Land trust, sporting or conservation organization?)
- ❑ Would a LLC or Incorporation better serve the landowner's tax needs instead of a CE/PDR that brings in tax-exempt third party and potential federal management?
- ❑ Would it be better to protect agriculture by:
 - Supporting reduced environmental restriction on agricultural producers.
 - Stopping the dumping of foreign commodities on our markets by foreign subsidized products at prices lower than our producer's cost of operation.
 - Making agriculture an attractive and viable business career and encourage our youth to remain in agriculture as a lifestyle for a productive and fulfilling life.
 - Electing politicians that fully understand the ramifications of CE/PDR's and are willing to support elimination of capital gains and death taxes and the needs local communities and their citizens.
 - Support County and State oversight on CE/PDR acquisitions that entail the intention to facilitate private grants that serve to end the cultural and historic economic use of the land, to add a layer of complexity which may discourage private actions.

Restricting land in the name of “protecting agriculture” simply does not protect agriculture. It can sell a scenario for the loss of the American way of life.

SOURCES:

1. *“Are you asking the right questions about Conservation Easements and Purchased Development Rights”*, by Ric Frost, Policy Analyst, New Mexico State University Cooperative Extension Service.
2. *“Wild-Eyed in the Wilderness”*, by John Elvin.
3. *“The High Country Times”*
4. *“Uniform Conservation Easement Act”* as drafted by the Conference of Commissioners on uniform State Laws.

With excerpts from the follow WebPages <http://www.wildlandsprojectrevealed.org> and <http://www.epi.freedom.org>.

rls